

APPEAL NO. 030503
FILED MARCH 27, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 3, 2003. The hearing officer determined that appellant (claimant) did not sustain a compensable injury, that he did not have disability, and that he did not timely report his injury. The hearing officer also determined that claimant "failed to prosecute his case." Claimant appealed these determinations and respondent self-insured (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

At the hearing, the claimant appeared and said: (1) his lawyer quit "without telling" him; (2) that he agreed with the hearing officer that "[he] communicated to the ombudsman that [he doesn't] wish to pursue this hearing before the [Texas Workers' Compensation Commission (Commission)]"; and (3) he has "no material" because his attorney has it and so "[his] ombudsman here has no material in which [sic] to go by. . . ."

The hearing officer admonished claimant that since he is not "pursuing the issues" then she will enter a decision and order "finding against [him] on the three issues that are currently present in front of [her]." The hearing officer then stated the three issues that were before her. The hearing officer then asked claimant whether he understood that "by notifying [her] . . . that [he did not] want to pursue these that [she was] going to enter a decision that says [he] did not have that injury." Claimant replied, "Yes, I understand." Claimant agreed that he understood that the order had legal consequences; that he's entitled to a lawyer; and that once the order is entered, he will "no longer have any issues pending or any proceedings pending." He also said he agreed that "any recourse [he would have] will be through some other venue other than the [Commission] for this particular injury." The hearing officer then said that based on claimant's representations that he understood the ramifications of his decision, she would enter an order making findings against claimant on the three issues before her. Claimant agreed that he understood that the hearing officer was "going to make orders" based on claimant's representations that he wanted to "withdraw [his] dispute." Claimant made some statements at the hearing that he was misled by an attorney. Claimant did not indicate in any way that he wanted a continuance or delay regarding the hearing.

The hearing officer signed a decision and order determining that: (1) claimant communicated on the record that he did not wish to pursue his claim; (2) claimant made an informed decision not to pursue workers' compensation benefits; (3) claimant voluntarily failed to prosecute his case; (4) claimant did not sustain a compensable

injury; (5) carrier is relieved of liability because of claimant's failure to timely notify his employer pursuant to Section 409.001; and (6) claimant did not have disability. The hearing officer ordered that claimant take nothing as a result of his claim.

To the extent that claimant contends that the hearing officer should not have decided the issues before her, we note that the parties had a right to request a resolution of disputed issues. The issues were found to be unresolved in the benefit review conference report, so neither party had the authority to unilaterally remove them from consideration. The hearing officer did not err in determining the issues before her. See Texas Workers' Compensation Commission Appeal No. 960728, decided May 29, 1996. See *also* Texas Workers' Compensation Commission Appeal No. 961802, decided October 28, 1996.

Claimant contends that he should have been examined by a toxicologist, that there was no "second opinion," that evidence was not exchanged by his lawyer, that he did give timely notice of his injury, and that he needs more testing. Claimant did not offer any evidence at the hearing. The hearing officer's determinations are supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Claimant contends that evidence was admitted over his objection. However, carrier did not offer any evidence at the hearing. We perceive no error. Claimant complains of the actions of his attorney, but we have no jurisdiction over his complaints in this regard.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**AT
(ADDRESS)
(CITY) TEXAS (ZIP CODE).**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Roy L. Warren
Appeals Judge